

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

ZIPIT WIRELESS, INC.,

Plaintiff,

v.

LG ELECTRONICS U.S.A., INC.

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Zipit Wireless, Inc., for its Complaint against Defendant LG Electronics U.S.A., Inc., alleges as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

THE PARTIES

2. Plaintiff, Zipit Wireless, Inc. (hereinafter “Zipit”) is a Delaware Corporation with a principal place of business located at 101 North Main Street, Suite 201, Greenville, South Carolina 29601.

3. On information and belief, Defendant LG Electronics U.S.A., Inc. (“LGEUS”) is a Delaware Corporation with its principal place of business at 910 Sylvan Avenue, Englewood Cliffs, New Jersey, 07632.

4. On July 23, 2018, Zipit sued LGEUS's parent company, LG Electronics, Inc. ("LGEKR"), in the District of South Carolina for infringement of U.S. Patent No. 7,292,870 and U.S. Patent No. 7,894,837. LGEKR moved to dismiss Zipit's complaint for lack of personal jurisdiction or, alternatively, to transfer the case to the Northern District of California (despite having no offices there). The South Carolina court denied LGEKR's motions without prejudice, granting LGEKR leave to refile its motion after the parties conducted jurisdictional discovery. In its reply brief in support of its motion, LGEKR stated that LGEUS is the "true defendant in this case," and that New Jersey is a proper venue given that LGEUS is headquartered in this District. *Zipit Wireless, Inc. v. LG Electronics, Inc.*, No. 6:18-cv-02016-JMC (D.S.C.), Dkt. 46 at 8 n.4.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §271 *et seq.*

6. LGEUS is in the business of supplying instant messaging devices, such as smartphones, in the United States.

7. LGEUS has solicited business in the State of New Jersey, transacted business within the State of New Jersey and attempted to derive financial benefit from residents of the State of New Jersey, including benefits directly related to the instant patent infringement cause of action set forth herein.

8. LGEUS has made, used, sold, offered for sale, and/or imported mobile phones and/or has placed such phones into the stream of commerce, which phones have been offered for sale, sold, and/or used in the State of New Jersey and this judicial district.

9. At the time of filing of this Complaint, LGEUS's smartphones are available for purchase by consumers in the State of New Jersey, including within this judicial district.

10. On information and belief, LGEUS has made, used, sold, offered for sale, and/or imported wireless mobile communication devices that are alleged herein to infringe one or more of the patents set forth herein, and/or has placed such devices into the stream of commerce, which devices have been made, offered for sale, sold, and/or used in the State of New Jersey and within this judicial district.

11. LGEUS sells products in this judicial district that are accused of infringement in this Complaint.

12. LGEUS is subject to personal jurisdiction in the State of New Jersey and in this judicial district.

13. LGEUS is subject to personal jurisdiction in the State of New Jersey by virtue of the fact that its headquarters and its principal place of business are located in the State of New Jersey. LGEUS is also subject to personal jurisdiction under the provisions of the New Jersey Long Arm Statute by virtue of the fact that, upon information and belief, LGEUS has availed itself of the privilege of conducting and soliciting business within this State, including engaging in at least some of the infringing activities in this State, as well as by others acting as LGEUS's agents and/or representatives, such that it would be reasonable for this Court to exercise

jurisdiction consistent with principles underlying the U.S. Constitution, and the exercise of jurisdiction by this Court would not offend traditional notions of fair play and substantial justice.

14. On information and belief, LGEUS has also established minimum contacts with this judicial district and regularly transacts and does business within this district, including advertising, promoting and selling products over the Internet, through intermediaries, representatives and/or agents located within this judicial district, that infringe Plaintiff Zipit's patents, which products are then sold and/or shipped directly to citizens residing within this State and in this judicial district. Upon further information and belief, LGEUS has purposefully directed activities at citizens of this State including those located within this judicial district.

15. On information and belief, LGEUS has purposefully and voluntarily placed its products into the stream of commerce with the expectation that they will be purchased and used by customers located in the State of New Jersey. On information and belief, LGEUS's customers in the State of New Jersey have purchased and used and continue to purchase and use LGEUS's products.

16. This Court has personal jurisdiction over Defendant under the long arm statute of the State of New Jersey because: (i) Defendant has and continues to intentionally sell products and methods, including the infringing methods, to customers in New Jersey; (ii) Defendant has and continues to intentionally instruct customers and potential customers in New Jersey with respect to how to use the products and methods that Defendant sells to customers in New Jersey; (iii) Defendant knows and has known its products and methods, including the infringing methods, have and continue to be sold and marketed in New Jersey; (iv) Defendant knows and has known that its manufactured products and methods will enter the United States of America and the State of New

Jersey; (v) Defendant has and continues to target customers and potential customers in New Jersey to buy and/or use Defendant's products and methods, including the infringing methods; (vi) Defendant has and continues to provide advice to customers in New Jersey; (vii) it has been and continues to be foreseeable that Defendant's products and methods, including the infringing methods, would enter the State New Jersey; (viii) Defendant has and continues to market to citizens of New Jersey through its website www.lg.com/us, which is copyrighted 2009-2020 by LG Electronics; (ix) Defendant has and continues to provide services to citizens of New Jersey through its through website; (x) Defendant derives substantial revenue from New Jersey; (xi) New Jersey has and continues to be part of Defendant's established distribution channels; (xii) the assertion of personal jurisdiction over Defendant is reasonable and fair; (xiii) and the State of New Jersey has an interest in this matter due to the presence of Defendant's products and methods, including the infringing methods, in the State of New Jersey.

17. This Court also has personal jurisdiction over Defendant as: (i) Defendant maintains a regular and established place of business, its headquarters, in the State of New Jersey; (ii) Defendant transacts business in the State of New Jersey; (iii) Defendant maintains regular and systematic business contacts with the State of New Jersey and within this judicial district and division; (iv) Defendant purposely, regularly, and continuously conducts business in the State of New Jersey and within this judicial district and division; (v) Defendant knowingly places its infringing products in the stream of commerce knowing, expecting, and intending for its infringing products to be offered for sale, sold, purchased, and used by residents of State of New Jersey and within this judicial district and division; (vi) Defendant knowingly places its infringing products in the stream of commerce knowing, expecting, and intending for materials supporting it infringing

products, such as user manuals and product support literature, to be offered for sale, sold, purchased, and used by residents of State of New Jersey and within this judicial district and division; (vii) Defendant purposefully directs its activities at residents of the State of New Jersey; (viii) the cause of action set forth herein arises out of or relates to the Defendant's activities in the State of New Jersey; and (ix) the exercise of jurisdiction over Defendant will not offend the traditional notions of fair play and substantial justice.

18. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1331, §1338(a), and §1400(b) at least because Defendant has committed acts of infringement and has a regular and established place of business in the District of New Jersey.

BACKGROUND

Zipit's Technology

19. Zipit has and continues to offer for sale Wi-Fi based instant messaging solutions. Zipit's first product, the Zipit Wireless Messenger:



was introduced in 2004 and was sold through major retailers including Target, Best Buy, Radio Shack, and Amazon and received press coverage in the Chicago Tribune, the New York Times, and many media outlets, as shown in Exhibit “G.”

20. In 2007, Zipit introduced its second-generation Wi-Fi based instant messaging device known as “Z2”:



21. In 2011, Zipit launched an enterprise messaging solution in conjunction with a major U.S. cellular carrier and is actively selling this solution into healthcare, hospitality, ems, manufacturing, utility, and government accounts. Zipit’s solution has been deployed in over 250 enterprise customers across the U.S. and Zipit’s customer base continues to grow monthly.

Zipit’s Awards And Notoriety

22. In 2005, *Time Magazine* awarded Zipit’s first Wi-Fi instant messaging device (“Zippy”) Time’s “The Most Amazing Inventions of 2005” Award:



To determine the award winners, Time Magazine “spent more than six months surveying fields as diverse as electronics, aeronautics, medical technology, sports equipment, toys, clothing and food looking for the newest-and most inspired-ideas of the year.” Exhibit “G.”

23. Zipit’s “Zippy” instant messaging device also won an award from iParenting Media in 2006. Exhibit “G.”

24. Zipit’s “Zippy” Wi-Fi instant messaging device also received praise and acclaim in media across the United States and the World in at least the Chicago Tribune “Zipit is king of messengers” (March 3, 2005); the New York Times “Making an Easy Task, Instant Messaging, Even Easier.” (March 10, 2005); the New York Times “Making an Easy Task, Instant Messaging, Even Easier.” (March 21, 2005) (Online Edition); the Austin American-Statesman “Gadgets: ... Instant messaging with no extra charges” (March 21, 2005); ABC12.com “Zipit Wireless Messenger” (Aug. 15, 2005); ABC12.com “Zipit Wireless Messenger” (Aug. 22, 2005); The Greenville News (Dec. 5, 2004); Parade “a brilliant little device” (April 24, 2005);

Univision.com; ym.com “What’s Hot: March 15, 2005” (March 17, 2005); Gizmodo “Perfect for the IM addict” (July 19, 2005); Gizmodo “Teacher’s Worst Nightmare - Aeronix ZipIt” (Sept. 29, 2005); HeraldToday.com (“Zipit rules wireless messaging world”) (March 10, 2005); HUB: Digital Living (March 2005); New York Daily News “Hot, hotter, hottest The Definitive guide to who and what is sexy right now” “Gadgets” (April 3, 2005); and the St. Petersburg Times “2005 Annual Gadget Guide From Apple to Zipit” “For the good times” (Nov. 28, 2005). Exhibit “G.”

25. Zipit’s second version of its Wi-Fi instant messaging device, “Z2,” also was widely praised and acclaimed. In 2007, PC Magazine awarded Zipit’s “Z2” the “Winner” of its “Best of Show” award at the Digital Life show in the category of “Portable Gear.” Zipit’s “Z2” also won another award from iParenting Media in 2008. Exhibit “G.”

26. Zipit’s “Z2” Wi-Fi instant messaging device, also was praised in at least the following media sources: PC Magazine DigitalLife 2007 “Best of Show” (Sept. 28, 2007); DigitalLife’s “Best of Show Award” (Oct. 2, 2007); 2013 iParenting Media Awards – Winner – Zipit Wireless Messenger 2 (April 30, 2008); 2014, Video – Z2 Highlight Reel (The Today Show; USA Today; Associated Press Article; The Washington Post; The Boston Globe; Houston Chronicle; The Philadelphia Inquirer; The Kansas City Star; The Miami Herald; San Francisco Chronicle; Orlando Sentinel; Rocky Mountain News; ABC Television Channel 7; CNN Television; FOX News FOX & Friends; The New York Times; Pittsburgh Post-Gazette; MTV Television; Yahoo! Tech; CNET; e!; The Montel Williams Television Show; NBC Channel 5; LINUX Journal; WNN Wi-Fi News; Digital Tech News; Wireless Week; electronista; I40 News; Best stuff; FOX & Friends (2015); The Montel Williams Show (Dec. 6, 2006; WABC – New York Channel 7 (Dec. 17, 2006); FOX Business (March 19, 2008); The Today Show (Jan.

6, 2008); MTV; The Detroit News – “In our opinion - Zipit Z2 perfect for kids” (June 30, 2008); the Akron Beacon, Ohio.com (April 14, 2008); the Arizona Star (April 3, 2008); the BaltimoreSun.com (April 17, 2008); The Record NorthJersey.com “Kids and their parents will love the Z2 messaging device” (April 12, 2008); TheStreet.com “Instant Messaging With Mass Appeal” (Dec. 7, 2007); Digital Life “Digital Life Announces the Digital Life Innovators Class of 2007” (Sept. 24, 2007); E-Gear “Is Anybody Out There” (April 9, 2008); Gizmodo “Zipit Z2 Wireless Messenger Lets Teens IM For Free” (Nov. 7, 2007); GoErie.com “ Txt all d tym” “IM friends without tying up computer” (April 11, 2008); CBS4Denver.com “One of the best products for teens, tweens and their parents” (2007); InfoSyncWorld.com “Zipit Z2 Wireless Messenger sends IMs without PC or phone” “it has a dedicated smiley button, which we have never seen before, but now we want on our Treo :-)” (Nov. 7, 2007); InsignifacantThoughts.com (Sept. 28, 2007); KansasCity.com “Better Messages” (Dec. 6, 2007); LinuxDevices.com (Nov. 9, 2007); MiamiHerald.com (Oct. 18, 2007); ny1.com (Sept. 27, 2007); NYTimes.com (Oct. 4, 2007); PCMag.com.br (Sept. 28, 2007); PC.Watch.Impress.co.JP (Dec. 9, 2007); Yahoo! News (Sept. 27, 2007); Register Hardware UK (Nov. 7, 2007); SlashGear.com (Sept. 27, 2007); StarTelegram.com “High-tech hobbies” (Oct. 14, 2007); the Minneapolis StarTribune.com (Oct. 8, 2007); DailyHerald.com (June 23, 2008); The Gazette Canada.com (Oct. 11, 2007); TheStreet.com “Instant Messenger With Mass Appeal” “a must-have for travelers” (Dec. 7 2007); TimeforKids.com (Nov. 26, 2007); Twice.com (Sept. 27, 2007); ABCNews.com (Nov. 2, 2007); ABCNews: The Ultimate Gift Guide (Nov. 8, 2007); Adweek Magazine “Top 10 Trends of 2007” (Dec. 17, 2007); BlogStuff.com (Nov. 26, 2007); Blog-SciFi.com (Sept. 27, 2007);

Brighthand.com (Sept. 30, 2007); CBS Tech Toys Review (Oct. 16, 2007); and The Charlotte Observer Charlotte.com (Oct. 21, 2007). Exhibit “G.”

Wi-Fi Instant Messaging Devices With Emoticons Drive Purchasing Decisions

27. Prior to the existence of Wi-Fi instant messaging, carriers typically charged up to \$0.20 per text, or \$20.00 per month for unlimited texting. Thanks to Wi-Fi based instant messaging, however, consumers no longer had to pay for individual instant messages or monthly service plans. As a result, by 2016, it was estimated that consumers saved \$54 billion (\$54,000,000,000) through the use of Wi-Fi instant messaging instead of from SMS-based instant messaging.

28. Instant messaging has been and continues to be the single most important smartphone feature. Indeed, many potential customers are unlikely to purchase a smartphone that is not able to generate an instant message comprising an emoji / graphical symbol (☺, ☹) that is sent over Wi-Fi.

29. Using a handheld device, such as a smartphone, to send instant messages that contain emojis is a major and growing form of communication among an incredibly large demographic. Indeed, this is reflected by Oxford Dictionary’s “word” of the year for 2015, which was the “face with tears of joy” emoji:



Oxford Dictionary selected the emoji as its “word” of the year because the emoji was “the ‘word’ that best reflected the ethos, mood, and preoccupations of 2015.” It is further reflected by the

creation of “World Emoji Day,” which is held annually on July 17.

ZIPIT’S PATENTS

30. The United States Patent and Trademark Office awarded Zipit two patents on its highly acclaimed “Instant Messaging Terminal Adapted For Wi-Fi Access Points,” U.S. Patent No. 7,292,870 and U.S. Patent No. 7,894,837.

Zipit’s U.S. Patent No. 7,292,870

31. On November 6, 2007, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,292,870, entitled “Instant Messaging Terminal Adapted For WI-FI Access Points.” A true and correct copy of U.S. Patent No. 7,292,870 is attached hereto as Exhibit “A.”

32. Zipit is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 7,292,870 (hereinafter the “’870 Patent”), including the right to sue for past, present, and future patent infringement, and to collect past, present, and future damages.

33. The ’870 patent complies with the Patent Act, including 35 U.S.C. §101, 35 U.S.C. §102, 35 U.S.C. § 103, and 35 U.S.C. §112. Exhibit “B.”

34. On July 16, 2013, the Patent Office issued a Certificate of Correction for the ’870 patent. Exhibit “C.”

35. Each and every claim of the ’870 patent is valid and enforceable.

36. The ’870 patent and its claims are entitled to the benefit of the date upon which Zipit filed its provisional patent application 60/532,000, which was filed on December 24, 2003. Exhibit “D.”

37. As the invention(s) claimed in the '870 patent were conceived no later than April 2003, the claims of the '870 patent are further entitled to a priority date of no later than April 2003.

IPR2014-01507

38. On March 30, 2015, the Patent Trial and Appeal Board ("PTAB") of the United States Patent and Trademark Office instituted an *Inter Partes* Review ("IPR") of the '870 patent.

39. On June 22, 2015, Zipit filed its "Patent Owner's Response Under 37 C.F.R. § 42.120." Exhibit "E."

40. On March 29, 2016, the PTAB issued a Final Decision that confirmed the patentability of all claims of the '870 Patent in IPR2014-01507. Exhibit "F."

41. All papers and pleadings filed with the PTAB for IPR2014-01507 are part of the prosecution history of the '870 Patent. Due to their size and volume, the papers and pleadings filed with the PTAB for IPR2014-01507 are incorporated herein by reference.

IPR2019-01567

42. On August 30, 2019, Defendant filed a Petition For *Inter Partes* Review of the '870 Patent.

43. On December 10, 2019, Zipit filed a Preliminary Response to Defendant's Petition, requesting the PTAB to deny Defendant's Petition. Exhibit "V," 870 POPR.

44. On information and belief, the PTAB should issue its Institution Decision regarding Defendant's Petition in March 2020.

No Claim Of Zipit's '870 Patent Is Abstract

45. The claims of the '870 Patent are focused on an advance over the prior art such that their character as a whole is not directed to excluded subject matter, such as an abstract idea, or any other subject matter excluded under 35 U.S.C. §101. For example, the claims of the '870 patent are directed to improvements in computer functionality.

46. The PTAB determined that the combinations claimed in the claims of the '870 Patent were novel and nonobvious, as did the Patent Office during its initial review of the claims. *See, e.g.*, Exhibit "B" and Exhibit "F."

47. The advancement claimed in the claims of the '870 Patent includes, *inter alia*, an instant messaging terminal and method that includes a housing, a display mounted in the housing, a data entry device that affords the generation of textual characters and graphical symbols, a wireless Internet protocol communications module, a wireless transceiver, and a control module that includes a processor for executing an application program to implement instant messaging and session protocols for a conversation. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. The claimed combination also improved the operation of computer functionality, overcoming various failures with existing computing devices as discussed in the Background of the Invention and the Summary of the Invention.

48. For example, providing the claimed combination in a handheld terminal (as opposed to a desktop, laptop, or PDA requiring external peripheral data entry and/or display devices) represented a significant advance in computer functionality, including allowing both

textual characters and graphical symbols to be entered/generated using a data entry device integrated into the handheld terminal. This avoided the need for a platform to support the data entry device during data entry. Furthermore, the claimed data entry device for generating/entering textual characters and graphical symbols improved the efficiency of computing devices by allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

49. The advancement claimed in the claims of the '870 Patent further includes, *inter alia*, an instant messaging terminal and method that, after loss of a network connection, automatically searches for a new connection and displays the conversation histories that were active when the network connection was lost. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. Indeed, such functionality would have run counter to the state of the art due to concerns about the impact of battery life. This claimed capability represented a significant advance in computer functionality. For example, the claimed capability does not depend on user instruction to locate a connection after connection loss. Moreover, the claimed capability of displaying active conversation histories for active conversations terminated by loss of network connection improves upon the state of the art, in which such conversation histories were typically lost upon termination of the user's network connection.

50. The advancement claimed in the claims of the '870 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a plurality of keys for graphical

symbols, each graphical symbol key including indicia identifying the graphical symbol generated by depressing the key bearing the indicia. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed feature also relates to the improvement in the efficiency of computing devices discussed above allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

51. The advancement claimed in the claims of the '870 Patent further includes, *inter alia*, an instant messaging terminal and method that includes at least one programmable key associated with a set of characters corresponding to a graphical symbol supported by an instant messaging service provider. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed feature also relates to the improvement in the efficiency of computing devices discussed above allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

52. The advancement claimed in the claims of the '870 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that stores a profile containing network settings for a network communicating with the communications module and the wireless transceiver through an access point. Such a claimed combination does

not exist in the prior art. Such a combination was not well-understood, routine, or conventional.

And such a combination constitutes a tangible, specific, concrete invention. This claimed capability further improves computer operation because it permits, for example, the handheld terminal to connect automatically to a network corresponding to a store profile without user intervention. *See* Exhibit “A,” ’870 Patent at 5:20-31.

53. The advancement claimed in the claims of the ’870 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that includes an audio player for generating sound from a downloaded file. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. Moreover, the provision of this capability in the claimed handheld terminal improved the operation of existing handheld terminals by, for example, allowing users to listen to music while exchanging instant messages (including generating/entering textual characters and graphical symbols using the data entry device) using a single handheld terminal.

54. The advancement claimed in the claims of the ’870 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that generates sound from files received from an Internet radio station through a wireless, Internet protocol access point. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. The provision of this capability in the claimed handheld terminal improved the operation of existing handheld terminals by, for example, allowing users to listen to sound files from an Internet radio station while exchanging instant messages

(including generating/entering textual characters and graphical symbols using the data entry device) using a single handheld terminal.

**The Inventions Claimed In The '870 Patent Were Not
Well-Understood, Routine, Or Conventional**

55. Prior to Zipit's invention, instant messaging primarily transpired with desktop computers.

56. Prior to Zipit's invention, text messages were sent over a carrier's cellular network using SMS. Users sending and receiving text messages typically were charged for each text, including at rates of \$0.20/text or \$20/month.

57. Zipit's technology allowed instant messaging by a handheld instant messaging terminal using Wi-Fi, avoiding the expense of texting and the need to share a desktop computer for instant messaging.

58. Zipit's patented and claimed technology allowed mobile handheld devices to directly connect to a Wi-Fi access point without using an intermediate protocol in order to send instant messages comprising an emoji / graphical symbol (☺, ☹) over Wi-Fi, instead of the cellular network.

59. No claims of the '870 Patent are unpatentable under §103. *See, e.g.*, Exhibit "B" and Exhibit "F." In addition, the patentability of the claims of the '870 Patent is confirmed by the overwhelming evidence of widespread acclaim that Patentee's "Zippy" and "Z2" devices received. Due to the several awards, newspaper stories, television stories, and online articles regarding Zipit's "Zippy" and "Z2" devices, including for example: (i) Time Magazine's "The Most Amazing Inventions of 2005" Award, which was awarded to Zipit Wireless, Inc. for its

“Zippy” device, (ii) the 2005 Chicago Tribune article, which declares that “Zipit Is King Of Messengers,” and (iii) PC Magazine’s “Winner” of its 2007 “Best of Show” award in the category of “Portable Gear,” which was awarded to Zipit for its “Z2” device, Zipit’s patented “Zippy” and “Z2” devices received widespread acclaim. Exhibit “G.”

60. A nexus exists between Zipit’s “Zippy” device and the claims of the ’870 Patent. Exhibits “E,” “G,” and “V.”

61. A nexus also exists between Zipit’s acclaimed “Z2” device and the claims of the ’870 Patent. Exhibits “E,” “G,” and “V.”

Zipit’s U.S. Patent No. 7,894,837 Patent

62. On February 22, 2011, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,894,837, entitled “Instant Messaging Terminal Adapted For Wireless Communication Access Points.” A true and correct copy of U.S. Patent No. 7,894,837 is attached hereto as Exhibit “H.”

63. Zipit is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 7,894,837 (hereinafter the “’837 Patent”), including the right to sue for past, present, and future patent infringement, and to collect past, present, and future damages.

64. The ’837 Patent complies with the Patent Act, including 35 U.S.C. §101, 35 U.S.C. §102, 35 U.S.C. § 103, and 35 U.S.C. §112. Exhibit “I.”

65. Each and every claim of the ’837 Patent is valid and enforceable.

66. The ’837 patent and its claims are entitled to the benefit of the filing date of the ’870 patent (May 14, 2004) and also the date upon which Zipit filed its provisional patent application (December 23, 2003). Exhibit “D.”

67. As the invention(s) claimed in the '837 patent were conceived no later than April 2003, the claims of the '837 patent are further entitled to a priority date of no later than April 2003.

IPR2014-01506

68. On March 30, 2015, the PTAB instituted an IPR of the '837 patent.

69. On June 22, 2015, Zipit filed its "Patent Owner's Response Under 37 C.F.R. §42.120." Exhibit "J."

70. On March 29, 2016, the PTAB issued a Final Decision that confirmed the patentability of all claims of the '837 Patent in IPR2014-01506. Exhibit "K."

71. All papers and pleadings filed with the PTAB for IPR2014-01506 are part of the prosecution history of the '837 Patent. Due to their size and volume, the papers and pleadings filed with the PTAB for IPR2014-01506 are incorporated by reference.

IPR2019-01568

72. On August 30, 2019, Defendant filed a Petition For *Inter Partes* Review of the '837 Patent.

73. On December 10, 2019, Zipit filed a Preliminary Response to Defendant's Petition, requesting the PTAB to deny Defendant's Petition. Exhibit "W," 837 POPR.

74. On information and belief, the PTAB should issue its Institution Decision regarding Defendant's Petition in March 2020.

Zipit's '837 Patent Is Not Abstract

75. The claims of the '837 Patent are focused on an advance over the prior art such that their character as a whole is not directed to excluded subject matter, such as an abstract idea, or any other subject matter excluded under 35 U.S.C. §101.

76. In fact, the PTAB determined that the combinations claimed in the claims of the '837 Patent were novel and nonobvious, as did the Patent Office during its initial review of the claims. *See, e.g.*, Exhibit "I" and Exhibit "K."

77. The advancement claimed in the claims of the '837 Patent includes, *inter alia*, an instant messaging terminal and method that includes a housing, a display mounted in the housing, a data entry device that affords the generation of textual characters and graphical symbols, a wireless Internet protocol communications module, a wireless transceiver, and a control module that includes a processor for executing an application program to implement instant messaging and session protocols for a conversation. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. The claimed combination also improved the operation of computer functionality, overcoming various failures with existing computing devices as discussed in the Background of the Invention and the Summary of the Invention.

78. For example, providing the claimed combination in a handheld terminal (as opposed to a desktop, laptop, or PDA requiring external peripheral data entry and/or display devices) represented a significant advance in computer functionality, including generation of both textual characters and graphical symbols using a data entry device integrated into the

handheld terminal. This avoided the need for a platform to support the data entry device during data entry. Furthermore, the claimed data entry device for generating textual characters and graphical symbols improved the efficiency of computing devices by allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

79. The advancement claimed in the claims of the '837 patent further includes, *inter alia*, an instant messaging terminal and method that includes a housing, a display mounted in the housing, a data entry device that affords the generation of textual characters and graphical symbols, a wireless Internet protocol communications module, a wireless transceiver, and a control module that includes a processor for executing an application program to implement at least one instant messaging protocol for generation of instant messaging data messages that are compatible with an instant messaging service. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. The claimed combination also improved the operation of computer functionality, overcoming various failures with existing computing devices as discussed in the Background of the Invention and the Summary of the Invention.

80. For example, providing the claimed combination in a handheld terminal (as opposed to a desktop, laptop, or PDA requiring external peripheral data entry and/or display devices) represented a significant advance in computer functionality, including generation of both textual characters and graphical symbols using a data entry device integrated into the

handheld terminal. This avoided the need for a platform to support the data entry device during data entry. Furthermore, the claimed data entry device for generating textual characters and graphical symbols improved the efficiency of computing devices by allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

81. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a plurality of keys for graphical symbols, each graphical symbol key including indicia identifying the graphical symbol generated by depressing the key bearing the indicia. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed feature also relates to the improvement in the efficiency of computing devices discussed above allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

82. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes at least one programmable key associated with a set of characters corresponding to a graphical symbol supported by an instant messaging service provider. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed feature also relates to the

improvement in the efficiency of computing devices discussed above allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

83. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module to generate, in accordance with the at least one instant messaging protocol being implemented, a character sequence corresponding to a graphical symbol in response to the depression of the programmable key being depressed. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed feature also relates to the improvement in the efficiency of computing devices discussed above allowing graphical symbols to be directly entered by a user, avoiding the need for the computing device to translate a sequence of textual characters into a graphical symbol prior to displaying and sending the graphical symbol.

84. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that detects beacons received by the wireless transceiver from a plurality of wireless network access points and prioritizes the detected beacons by strength of detected signal. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed capability improved the operation of a computing device because it, for example,

facilitates connection to the strongest wireless network access point, thereby optimizing speed and reliability of instant messaging.

85. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that stores a profile containing network settings for a network communicating with the communications module and the wireless transceiver through an access point in memory. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. This claimed capability further improves computer operation because it permits, for example, the handheld terminal to connect automatically to a network corresponding to a store profile without user intervention. *See* '837 patent at 5:5-15.

86. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that includes an audio player for generating sound from a downloaded file. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. Moreover, the provision of this capability in the claimed handheld terminal improved the operation of existing handheld terminals by, for example, allowing users to listen to music while exchanging instant messages (including generating/entering textual characters and graphical symbols using the data entry device) using a single handheld terminal.

87. The advancement claimed in the claims of the '837 Patent further includes, *inter alia*, an instant messaging terminal and method that includes a control module that generates

sound from files received from an Internet radio station through a wireless, Internet protocol access point. Such a claimed combination does not exist in the prior art. Such a combination was not well-understood, routine, or conventional. And such a combination constitutes a tangible, specific, concrete invention. The provision of this capability in the claimed handheld terminal improved the operation of existing handheld terminals by, for example, allowing users to listen to sound files from an Internet radio station while exchanging instant messages (including generating/entering textual characters and graphical symbols using the data entry device) using a single handheld terminal.

The Inventions Claimed In The '837 Patent Were Not Well-Understood, Routine, Or Conventional

88. Prior to Zipit's invention, handheld devices only allowed SMS text messaging over a carrier's cellular network.

89. Prior to Zipit's invention, text messages were sent over a carrier's cellular network using SMS. Users sending and receiving text messages typically were charged for each text, including at rates of \$0.20/text or \$20/month.

90. Zipit's technology allowed instant messaging by a handheld mobile device using Wi-Fi, avoiding the expense of texting and the need to share a desktop computer for instant messaging.

91. Zipit's patented and claimed technology allowed mobile handheld devices to directly connect to a Wi-Fi access point without using an intermediate protocol in order to send instant messages comprising an emoji / graphical symbol (☺, ☹) over Wi-Fi, instead of the cellular network.

92. No claims of the '837 Patent are unpatentable under §103. *See, e.g.*, Exhibit “I” and Exhibit “K.” In addition, the patentability of the claims of the '837 Patent is confirmed by the overwhelming evidence of widespread acclaim that Patentee’s “Zippy” and “Z2” devices received. Due to the several awards, newspaper stories, television stories, and online articles regarding Zipit’s “Zippy” and “Z2” devices, including for example (i) Time Magazine’s “The Most Amazing Inventions of 2005” Award, which was awarded to Zipit Wireless, Inc. for its “Zippy” device, (ii) the 2005 Chicago Tribune article, which declares that “Zipit Is King Of Messengers,” and (iii) PC Magazine’s “Winner” of its 2007 “Best of Show” award in the category of “Portable Gear,” which was awarded to Zipit for its “Z2” device, Zipit’s “Zippy” and “Z2” devices received widespread acclaim. Exhibit “G.”

93. A nexus exists between Zipit’s “Zippy” device and the claims of the '837 Patent. Exhibits “G,” “J,” and “W.”

94. A nexus also exists between Zipit’s acclaimed “Z2” device and the claims of the '837 Patent. Exhibits “G,” “J,” and “W.”

Zipit’s Foreign Patents

95. Zipit also has been awarded related foreign patents. In Europe (including Germany, Great Britain, and France), Zipit was awarded EP 1747619B1. Exhibit “L.” In Japan, Zipit was awarded JP 5031556. Exhibit “M.” And in Australia, Zipit was awarded AU 2009251161 B2. Exhibit “N.”

Zipit's Past Litigation

96. The two instituted IPRs referenced above were initiated by BlackBerry Corporation and BlackBerry Limited (collectively "BlackBerry"). Prior to the institution of the two IPRs, Zipit filed suit against BlackBerry for infringement of Zipit's '870 and '837 Patents.

97. After the patentability / validity of all claims in Zipit's '870 and '837 patents were confirmed by the PTAB, Zipit and BlackBerry entered into a license and settlement agreement.

98. Zipit subsequently filed suit against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America, LLC (collectively "Samsung") for Samsung's infringement of Zipit's '870 and '837 Patents.

99. The *Zipit-Samsung* lawsuit was terminated after Samsung became a licensee of Zipit's '870 and '837 patents.

DEFENDANT'S INFRINGING INSTANT MESSAGING DEVICES

100. On information and belief, Defendant has and continues to offer for sale, sell, use, and import into the United States and New Jersey smartphones with Wi-Fi capability that send and receive instant messages comprising an emoji / graphical symbol (☺, ☹) ("Defendant's infringing instant messaging devices").

101. Some of Defendant's representative infringing instant messaging devices include, but are not limited to:

Model Name	Release Date
Revolution / Tegra 2 / VS910	2011 May
Optimus 2X	2011 February
Optimus Black P970	2011 May
Optimus Me P350	2011 February

Optimus Chat C550	2011 February
Optimus 3D P920	2011 July
Thrill 4G P925	2011 August
Thrive P506	2011 April
Phoenix P505	2011 April
US760 Genesis	2011 June
Optimus Pro C660	2011 September
Optimus White	2011 July
Marquee (Sprint) / Majestic (US Cellular)	2011 October
Esteem MS910 / Bryce	2011 October
Optimus Net / Optimus Net P699 / Optimus Link P690	2011 July
Optimus Net Dual / Optimus Net Dual P698	2011 Q3
Optimus Sol E730	2011 September
Optimus Hub E510	2011 October
Optimus Slider / LS700 / Gelato Q	2011 October
Jil Sander Mobile	2011 October
Enlighten VS700	2011 September
DoublePlay / Flip II / C729	2011 October
Extravert VN271	2011 November
Optimus 2 AS680	2011 Q4
Nitro HD / P930	2011 December
Prada 3.0 / Prada K2 / P940	2012 January
Spectrum VS920 / Revolution 2	2012 January
Viper 4G LTE LS840	2012 April
Connect 4G MS840	2012 February
Rumor Reflex LN272	2012 March
Optimus L3 E400	2012 February
Optimus L5 E610	2012 June
Optimus L7 P700	2012 May
Optimus 3D Max P720	2012 May

Optimus 4X HD P880	2012 June
Optimus M+ MS695	2012 April
Lucid 4G VS840 / Cayman / Optimus Exceed	2012 April
Optimus True HD LTE P936 / Maximo True HD LTE	2012 May
Optimus L3 E405	2012 July
Optimus Vu P895	2012 November
Motion 4G MS770 (MetroPCS) / Optimus Regard (Cricket Wireless)	2012 August
Optimus L9 P760	2012 November
Optimus L5 Dual E615	2012 September
Escape P870	2012 September
Splendor US730 / Snapshot	2012 September
Intuition VS950	2012 September
Optimus G E975	2012 November
Optimus G LS970 / Eclipse 4G LTE	2012 Q4
Optimus G E970	2012 November
Optimus L9 P769	2012 November
Mach LS860 / Cayenne	2012 December
Spectrum II 4G VS930 / Revolution 2	2012 October
Nexus 4 E960 / Nexus 4 / Mako	2012 November
Optimus L1 II E410	2013 April
Optimus L3 II E430	2013 April
Optimus L3 II Dual E435	2013 April
Optimus L5 II E460	2013 April
Optimus L5 II Dual E455 / Optimus Duet	2013 April
Optimus L7 II P710	2013 March
Optimus L7 Dual P715	2013 March
Optimus G Pro E985	2013 April
Optimus F5	2013 May
Optimus F6	2013 September

Optimus F7	2013 June
Lucid2 VS870	2013 April
Optimus F3	2013 June
Optimus Zone VS410	2013 June
Optimus L4 II E440	2013 July
Optimus L4 Dual E445	2013 July
Optimus GJ E975W	2013 June
Enact VS890	2013 August
Optimus L9 II	2013 October
G2	2013 September
Optimus L2 E435	2014 March
G Pro Lite Dual	2013 November
G Pro Lite	2013 November
G Flex	2013 November
Nexus 5	2013 November
LG Optimus F3Q	2014 January
Optimus L1 II Tri E475	2014 February
Optimus L4 II Tri E470	2013 October
G Pro 2	2014 April
L40 Dual D170	2014 May
Optimus Fuel L34C	2014 February
L45 Dual X132	2014
L70 Dual D325	2014 May
L70 D320N	2014 February
L90 D405	2014 March
L90 Dual D410	2014 April
G2 Mini	2014 April
G2 Mini LTE	2014 March
F70 D315	2014 May
L65 Dual D285	2014 May

Lucid 3 VS876	2014 April
L80 Dual	2014 May
L80	2014 Q2
Volt	2014 May
L35	2014 June
G3	2014 June
L65 D280	2014 June
G3 S / D725	2014 August
G3 S Dual	2014 August
G3 LTE-A	2014 July
L20	2014 July
L30	2014 June
L50	2014 July
G Vista	2014 August
L Fino	2014 September
L Bello	2014 September
G3 Stylus	2014 October
L60 Dual	2014 August
L60	2014 August
F60	2014 October
G3 Screen	2014 December
G3 Dual LTE	2014 November
Tribute	2014 October
G Flex2	2015 February
Joy	2015 May
Leon	2015 April
Spirit	2015 March
Magna	2015 May
G4 Stylus	2015 May
G Stylo	2015 May

G4	2015 April
G4 Dual	2015 April
G4c	2015 June
G4 Beat	2015 August
Bello II	2015 September
Tribute 2	2015 July
Wine Smart	2015 September
Zero / Class	2015 October
Nexus 5X	2015 October
V10	2015 October
G Vista 2	2015 November
Ray	2016 January
K7	2016 February
K8	2016 April
G5	2016 April
K3	2016 September
Stylo 2	2016 April
Stylus 2 Plus	2016 July
X power	2016 September
X mach	2016 September
X max	2016 December
X5	2016 August
X skin	2016 August
V20	2016 October
U	2016 November
K3	2017 April
K4 (2017) / Phoenix 3	2017 March
K8 (2017)	2017 April
K10 (2017)	2017 February
K20 Plus	2016 December

Harmony	2017 April
Stylus 3 / Stylo 3	2017 March
Stylo 3 Plus	2017 May
X Charge	2017 June
G6	2017 March
X venture	2017 May
Q6/Q6a	2017 August
Q8	2017 August
V30/V30+	2017 September
Aristo 2	2018 January
K8 (2018)	2018 February
K10+/K10a (2018)	2018 February
V30S ThinQ/V30S+ ThinQ	2018 March
LG Signature Edition	2018 July
LG X4/X4+	2018 March
LG K9	2018 March
LG K30	2018 May
LG Q7/Q7+/Q7a	2018 June
LG V35 ThinQ/V35+ ThinQ	2018 May
LG Stylo 4	2018 July
LG X2	2018 June
LG K11+	2018 July
LG G7/G7 Fit/ G7 One	2018 May
LG Candy	2018 August
LG V40 ThinQ	2018 October
LG Q9/Q9 One	2019 December
LG Q8 ThinQ/G8s ThinQ	2019 August
LG Q60	2019 November
LG K50	2019 February
LG K40	2019 December

LG V50 ThinQ 5G/V50S ThinQ 5G	2019 May
LG K12+	2019 October
LG X6	2019 November
LG W30/W30 Pro	2019 June
LG W10	2019 June
LG Stylo 5	2019 August
LG X2 (2019)	2019 August
LG K30 (2019)	2019 October
LG K40S	2019 August
LG K50S	2019 August
LG Q70	2019 October
LG G8X ThinQ	2019 November
LG V50S ThinQ 5G	2019 September

102. Defendant's infringing instant messaging devices are specifically designed to: (i) use an Android operating system; (ii) run an instant messaging application; (iii) send and receive instant messages; (iv) access the Google Play store; and (v) download an instant messaging application.

103. Some of Defendant's infringing instant messaging devices are smartphones that are preloaded with one or more instant messaging application that is able to, and does, send an instant message comprising an emoji / graphical symbol (☺, ☹) over Wi-Fi. Defendant provides its customers and potential customers with instructions on how to use these instant messaging devices in the United States and in New Jersey. For example, such instructions exist in user manuals. Exhibits "O" and "P."

104. Some of Defendant's infringing instant messaging devices are smartphones that are Wi-Fi capable that are not preloaded with an instant messaging application. Instead of preloading an instant messaging application on the smartphone, Defendant instructs its customers to download an instant messaging application from an application store, such as for example Google Play store. Defendant provides its customers and potential customers with instructions on how to use these instant messaging devices in the United States. For example, such instructions exist in user manuals. Exhibits "O" and "P."

105. On information and belief, Defendant's infringing instant messaging devices are smartphones that have been and continue to be offered for sale, sold, used, and imported into the United States and New Jersey preloaded with an instant messaging application, such as for example, "Hangouts." The "Hangouts" application allows Defendant's smartphones to send instant messages comprising an emoji / graphical symbol (☺, ☹) over Wi-Fi.

106. On information and belief, Defendant knowingly and intentionally encourages end users to download third party instant messaging applications onto one or more of Defendant's smartphones so that an end user is able to use one or more of Defendant's smartphones to send instant messages comprising an emoji / graphical symbol (☺, ☹) over Wi-Fi. On information and belief, some of these third-party instant messaging applications also may be preloaded onto Defendant's smartphones. These instant messaging apps allow Defendant's smartphone to send instant messages comprising an emoji / graphical symbol over Wi-Fi.

107. On information and belief, prior to 2017 Defendant's smartphones "used their own emoji images....":



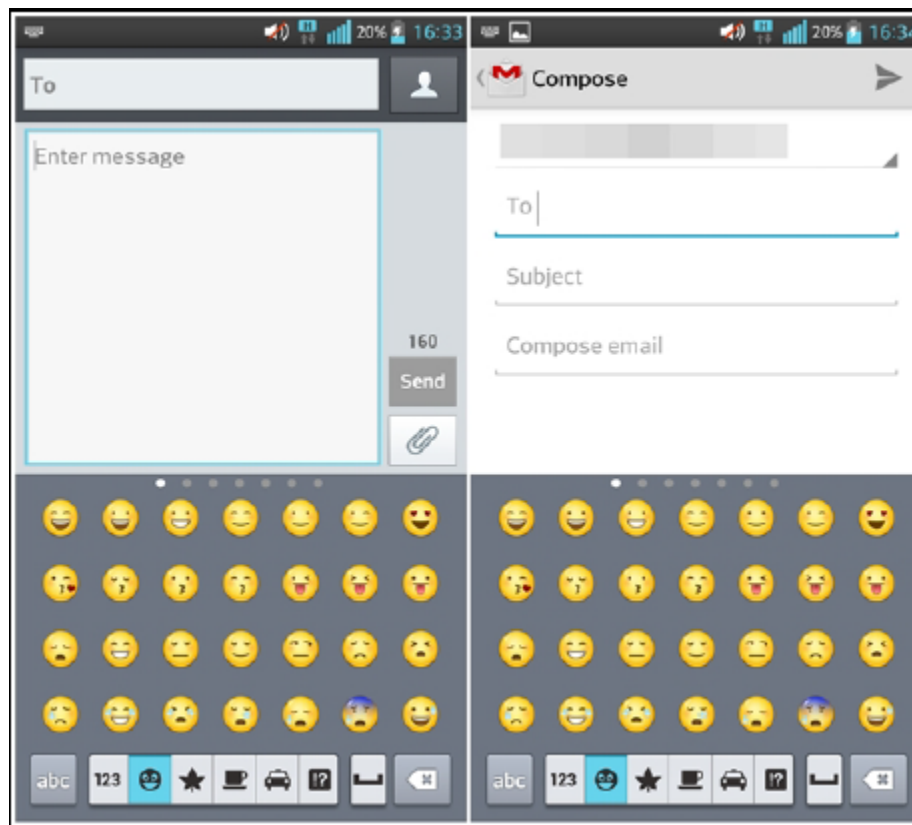
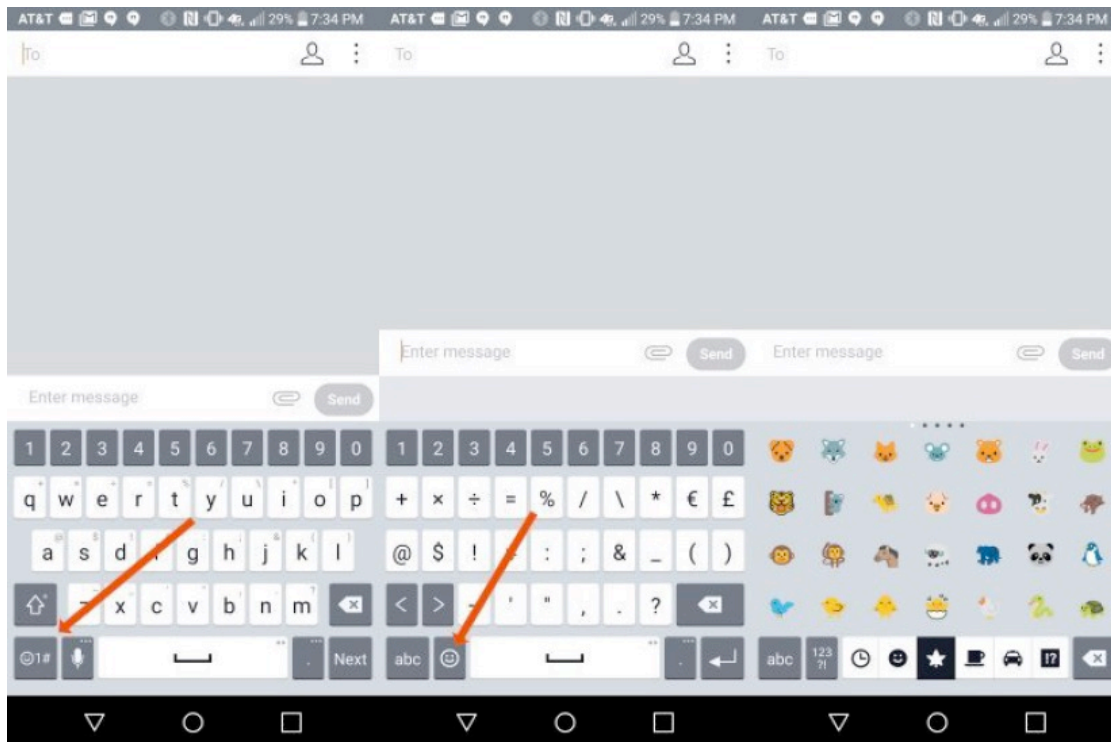


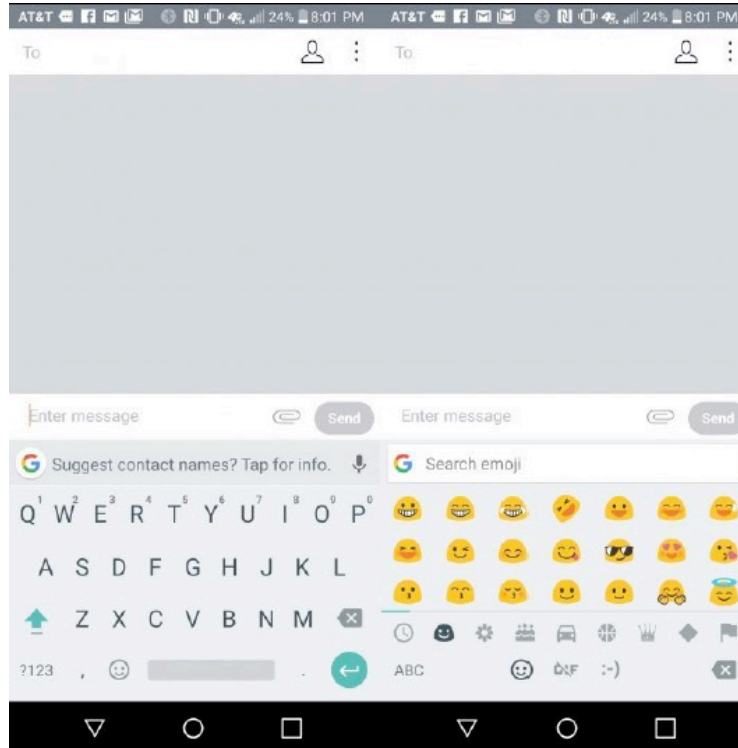


Exhibit “Q.”

108. On information and belief, during and since 2017 Defendant’s smartphones have and continue to use emojis. Exhibit “R.”

109. On information and belief, Defendant’s smartphones include keyboards and keys that bear an emoji / graphical symbol (☺, ☹) that is generated by pressing the key:





Exhibits “S,” “O,” and “P.”

110. On information and belief, Defendant is stealing Zipit’s patented technology to illegally make money in the United States and in New Jersey. On information and belief, Defendant illegally makes money by, for example, (i) selling smartphones that could not otherwise be sold if they were unable to send an instant message containing an emoji / graphical symbol (☺,☹) over a Wi-Fi connection; (ii) selling instant messaging applications that allow a smartphone to send an instant message containing an emoji / graphical symbol (☺,☹) over a Wi-Fi connection; (iii) selling advertisements that are displayed during an end user’s use of an instant messaging application that is able to send an instant message containing an emoji / graphical symbol (☺,☹) over a Wi-Fi connection; (iv) selling features in an instant messaging

application that allows a smartphone to send an instant message containing an emoji / graphical symbol (☺,☹) over a Wi-Fi connection; and (v) selling information about end users who use an instant messaging application to send an instant message containing an emoji / graphical symbol (☺,☹) over a Wi-Fi connection.

THE PARTIES' PRE-SUIT COMMUNICATIONS

111. Zipit provided Defendant's predecessor in interest, LG Electronics Mobilecomm U.S.A., Inc., with written notice of infringement of Zipit's '870 and '837 Patents on or about July 26, 2018. Exhibit "U." That notice letter enclosed charts identical or substantially identical to Exhibits "O" and "P."

112. Neither Defendant, nor its predecessor in interest, LG Electronics Mobilecomm U.S.A., Inc., responded to Zipit.

COUNT ONE: PATENT INFRINGEMENT **(U.S. Patent No. 7,292,870)**

113. Zipit realleges and incorporates herein the preceding allegations of this Complaint as if fully set forth herein.

114. Defendant has in the past and continues to infringe one or more claims of the '870 Patent, including claims 20, 21, 24, 25, 26, 27, 28, 29, and 30 in violation of 35 U.S.C. §§271 (a), (b), and (c). Representative infringement claim charts are attached as Exhibit "O."

115. Defendant's infringing acts include, but are not necessarily limited to, Defendant's manufacture, use, offering for sale, sale, and importation of Wi-Fi-enabled instant messaging devices and methods, such as the above listed smartphones, that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, ☺, using an instant messaging

application that was preloaded onto Defendant's Wi-Fi enabled smartphone by Defendant, such as "Hangouts," and/or using a third party instant messaging application that has been downloaded onto one of the Defendant's Wi-Fi enabled smartphones, as instructed.

116. Defendant's infringing smartphones include, but are not limited to, the list of Defendant's smartphones set forth above.

117. As a non-limiting, representative example, Defendant's G5 smartphones infringe claims 20, 21, 24, 25, 26, 27, 28, 29, and 30 of Zipit's '870 Patent because Defendant's G5 smartphones generate and send an instant message that includes an emoji / graphical symbol using Wi-Fi. Exhibit "O." Defendants' G5 smartphones further infringe claim 21 of Zipit's '870 Patent because Defendant's G5 smartphones comprise a specific key that has an emoji / graphical symbol (☺) that is generated by depressing the key:

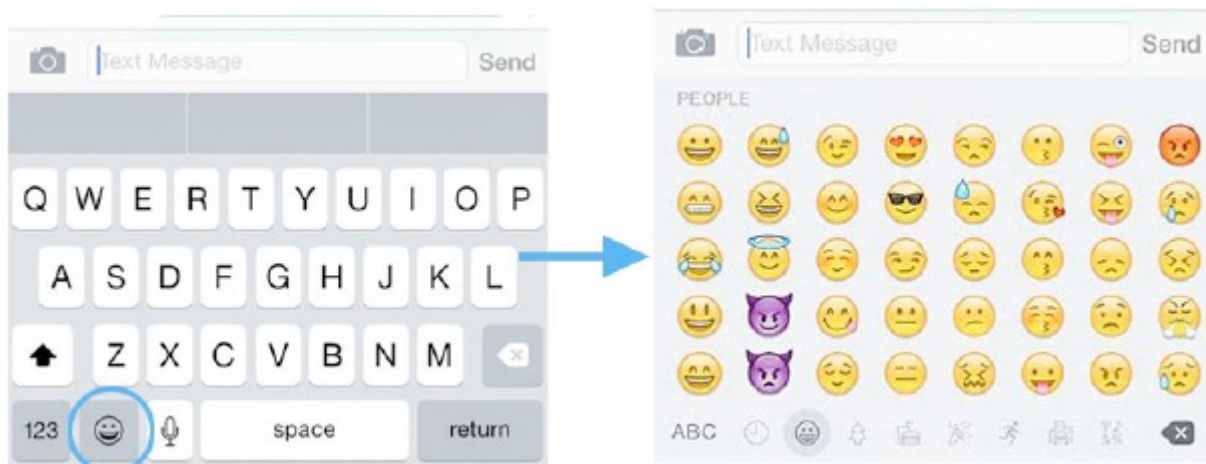


Exhibit "O." On information and belief, Defendant's G5 smartphones have been made, used, offered for sale, sold and/or imported into the United States and New Jersey since at least June 2012.

118. Defendant has in the past and continues to indirectly infringe one or more claims of the '870 Patent in violation of 35 U.S.C. § 271(b) by actively, knowingly, and intentionally inducing direct infringement by other persons, including patrons, customers, and end users, by offering for sale and/or selling Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone, in the United States and New Jersey without authority or license from Zipit and in a manner understood and intended to infringe Zipit's '870 Patent.

119. Defendant instructs customers and potential customers who reside in the State of New Jersey how to send an instant message comprising an emoji / graphical symbol, such as ☺, ☹, 😊, over Wi-Fi using one of Defendant's smartphones. For example, such instructions are in the form of on-line content and user manuals.

120. Defendant's parent LGEKR had actual knowledge of Zipit's '870 patent no later than December 31, 2009. Exhibit "T." On information and belief, LGEUS likewise had actual knowledge of Zipit's '870 patent at least as of that date as well.

121. Zipit provided Defendant with written notice of the '870 Patent on or about July 26, 2018. Exhibit "U." At the same time, Zipit also told Defendant that Defendant has in the past infringed and is continuing to infringe the '870 Patent. As a result, Defendant had notice of its alleged infringement of the '870 Patent no later than July 26, 2018.

122. On information and belief, since receiving notice from Zipit on or about July 26, 2018, Defendant has not changed its course of conduct, Defendant has not changed its infringing products, Defendant has not changed its infringing processes, and Defendant has not changed any of its instructions or supporting literature and materials due to Zipit's '870 Patent.

123. On information and belief, as Defendant deliberately avoided confirming its high probability of wrongdoing, Defendant has and continues to directly infringe, and induce the direct infringement of, one or more claims of the '870 Patent, with willful blindness.

124. Defendant also has in the past and continues to indirectly infringe one or more claims of the '870 Patent, in violation of 35 U.S.C. § 271(c) by actively, knowingly, and intentionally contributing to an underlying direct infringement by other persons, such as Defendant's patrons, customers, and end users, by offering for sale and/or selling Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as 😊, 😞, 😏, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone, in the United States without authority or license from Zipit and in a manner understood and intended to infringe Zipit's '870 Patent.

125. Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as 😊, 😞, 😏, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as

an LGEUS smartphone are (i) a component and material part of the inventions claimed in one or more claims of the '870 Patent, (ii) knowingly and especially designed for use in infringing one or more claims of the '870 Patent, (iii) intended to be used to infringe one or more claims of the '870 Patent, and (iv) not a staple item of commerce suitable for substantial non-infringing use.

126. On information and belief, as Defendant deliberately avoided confirming its high probability of wrongdoing, Defendant has and continues to infringe, and contribute to the direct infringement of one or more claims of the '870 Patent, with willful blindness.

127. Customers who reside in the State of New Jersey, and the District of New Jersey, may purchase Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone.

128. Defendant instructs customers and potential customers who reside in the State of New Jersey, and the District of New Jersey, how to send an instant message comprising an emoji / graphical symbol, such as ☺, ☹, 😊, over Wi-Fi using one of Defendant's smartphones. For example, such instructions are in the form of on-line content and user manuals.

129. On information and belief, since receiving notice from Zipit on or about July 26, 2018, Defendant has not changed its course of conduct, Defendant has not changed its infringing products, Defendant has not changed its infringing processes, and Defendant has not changed any of its instructions or supporting literature and materials due to Zipit's '870 Patent.

130. Defendant's infringement of the '870 Patent has been, and continues to be, objectively reckless, willful and deliberate, entitling Zipit to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

131. Zipit has and continues to suffer damages as a direct and proximate result of Defendant's infringement of the '870 Patent and will suffer additional and irreparable damages unless Defendant is permanently enjoined by this Court from continuing its infringement. Zipit has no adequate remedy at law.

132. Zipit is entitled to: (i) damages adequate to compensate it for Defendant's infringement of the '870 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Zipit's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

COUNT TWO: PATENT INFRINGEMENT
(U.S. Patent No. 7,894,837)

133. Zipit realleges and incorporates herein the preceding allegations of this Complaint as if fully set forth herein.

134. Defendant has in the past and continues to infringe one or more claims of the '837 patent, including claims 11, 12, 14, 15, 16, and 20 in violation of 35 U.S.C. §§271 (a), (b), and (c). Representative infringement claim charts are attached as Exhibit "P."

135. Defendant's infringing acts include, but are not necessarily limited to, Defendant's manufacture, use, offering for sale, sale, and importation of Wi-Fi enabled instant messaging devices and methods, such as the above listed smartphones, that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using an instant messaging

application that was preloaded onto Defendant's Wi-Fi enabled smartphone by Defendant, such as "Hangouts," and/or using a third party instant messaging application that has been downloaded onto one of the Defendant's Wi-Fi enabled smartphones, as instructed.

136. Defendant's infringing smartphones include, but are not limited to, the list of Defendant's smartphones set forth above.

137. As a non-limiting example, Defendant's G5 smartphones infringe claims 11, 12, 14, 15, 16, and 20 of Zipit's '837 patent because they generate and send an instant message that includes an emoji / graphical symbol using Wi-Fi. Defendant's G5 smartphones further infringe claim 12 of Zipit's '837 patent because they comprise a specific key that has an emoji / graphical symbol (☺) that is generated by pressing the key:

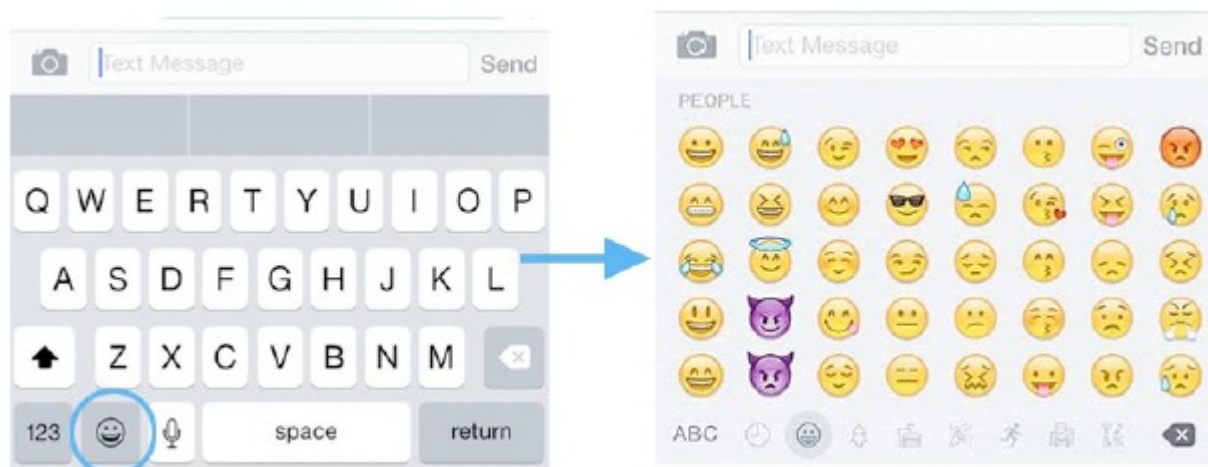


Exhibit "P." On information and belief, Defendant's G5 smartphones have been made, used, offered for sale, sold, and/or imported into the United States and New Jersey since at least June 2012.

138. Defendant has in the past and continues to indirectly infringe one or more claims of the '837 Patent, in violation of 35 U.S.C. § 271(b) by actively, knowingly, and intentionally

inducing direct infringement by other persons, including patrons, customers, and end users, by offering for sale and/or selling Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone, in the United States without authority or license from Zipit and in a manner understood and intended to infringe Zipit's '837 Patent.

139. Defendant instructs customers and potential customers who reside in the State of New Jersey how to send an instant message comprising an emoji / graphical symbol, such as ☺, ☹, 😊, over Wi-Fi using one of Defendant's smartphones. For example, such instructions are in the form of on-line content and user manuals.

140. Zipit provided Defendant with written notice of the '837 Patent on or about July 26, 2018. Exhibit "U." At the same time, Zipit also told Defendant that Defendant has in the past infringed and is continuing to infringe the '837 Patent. As a result, Defendant had notice of its alleged infringement of the '837 Patent no later than July 26, 2018.

141. On information and belief, since receiving notice from Zipit on or about July 26, 2018, Defendant has not changed its course of conduct, Defendant has not changed its infringing products, Defendant has not changed its infringing processes, and Defendant has not changed any of its instructions or supporting literature and materials due to Zipit's '837 Patent.

142. On information and belief, as Defendant deliberately avoided confirming its high probability of wrongdoing, Defendant has and continues to directly infringe, and induce the direct infringement of, one or more claims of the '837 Patent, with willful blindness.

143. Defendant also has in the past and continues to indirectly infringe one or more claims of the '837 Patent, in violation of 35 U.S.C. § 271(c) by actively, knowingly, and intentionally contributing to an underlying direct infringement by other persons, such as Defendant's patrons, customers, and end users, by offering for sale and/or selling Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone, in the United States without authority or license from Zipit and in a manner understood and intended to infringe Zipit's '837 Patent.

144. Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone are (i) a component and material part of the inventions claimed in one or more claims of the '837 Patent, (ii) knowingly and especially designed for use in infringing one or more claims of the '837 Patent, (iii) intended to be used to infringe one or more claims of the '837 Patent, and (iv) not a staple item of commerce suitable for substantial non-infringing use.

145. On information and belief, as Defendant deliberately avoided confirming its high probability of wrongdoing, Defendant has and continues to infringe, and contribute to the direct infringement of one or more claims of the '837 Patent, with willful blindness.

146. Customers who reside in the State of New Jersey, and the District of New Jersey, may purchase Defendant's Wi-Fi enabled instant messaging devices that generate an instant message that includes an emoji / graphical symbol, such as ☺, ☹, 😊, using one of Defendant's past or present instant messaging applications, and/or a third party instant messaging application, that has been loaded onto one of Defendant's Wi-Fi enabled instant messaging devices, such as an LGEUS smartphone.

147. Defendant instructs customers and potential customers who reside in the State of New Jersey, and the District of New Jersey, how to send an instant message comprising an emoji / graphical symbol, such as ☺, ☹, 😊, over Wi-Fi using one of Defendant's smartphones. For example, such instructions are in the form of on-line content and user manuals.

148. On information and belief, since receiving notice from Zipit on or about July 26, 2018, Defendant has not changed its course of conduct, Defendant has not changed its infringing products, Defendant has not changed its infringing processes, and Defendant has not changed any of its instructions or supporting literature and materials due to Zipit's '837 Patent.

149. Defendants' infringement of the '837 Patent has been, and continues to be, objectively reckless, willful and deliberate, entitling Zipit to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

150. Zipit has and continues to suffer damages as a direct and proximate result of Defendant's infringement of the '837 Patent and will suffer additional and irreparable damages unless Defendant is permanently enjoined by this Court from continuing its infringement. Zipit has no adequate remedy at law.

151. Zipit is entitled to: (i) damages adequate to compensate it for Defendant's infringement of the '837 Patent, which amounts to, at a minimum, a reasonable royalty; (ii) Zipit's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Zipit seeks the following relief:

- a. That Defendant be enjoined from further infringement of Zipit's '870 Patent and Zipit's '837 Patent pursuant to 35 U.S.C. §283;
- b. That Defendant be ordered to pay damages adequate to compensate Zipit for Defendant's infringement of Zipit's '870 Patent and Zipit's '837 Patent pursuant to 35 U.S.C. §284;
- c. That Defendant be ordered to pay Zipit Zipit's lost profits due to Defendant's infringement of Zipit's '870 Patent and Zipit's '837 Patent pursuant to 35 U.S.C. §284;
- d. That Defendant be ordered to pay Zipit treble damages pursuant to 35 U.S.C. §284;
- e. That Defendant be ordered to pay prejudgment interest pursuant to 35 U.S.C. §284;
- f. That Defendant be ordered to pay all costs associated with this action pursuant to 35 U.S.C. §284;
- g. That Defendant be ordered to pay Zipit's attorneys' fees pursuant to 35 U.S.C. §285;
- h. That Zipit be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Zipit demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted, this 12th day of February, 2020.

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